Supreme Court, U.S.
FILED
MAY 6 1989
JOSEPH F. SPANIOL, JR.
CLERK

CASE NO. 88-1998

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1988

GARY L. LAGORE
Petitioner,

V.

STATE OF MICHIGAN
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MICHIGAN COURT OF APPEALS

Gary L. LaGore
12995 Pennington Rd.
Britton, Michigan 49229
(313) 439-2267
Petitioner in Propria Persona

QUESTION PRESENTED

Whether overly zealous Officer Cardenas violated petitioner's Forth Amendment right to be free from unreasonable searches and seizures when he went inside a private residence to investigate the possibility of a traffic infraction and then proceeded to arrest Petitioner for Driving under the influence (OUIL) and resisting and obstructing a police Officer when Petitioner resisted the command of Officer Cardenas when he said to * * * "to step outside so I can talk to you about your driving" * * * contrary to the laws of the State of Michigan and the Forth Amendment to the United States Constitution.

TABLE OF CONTENTS

The Question Presented For Review	i
Table of Contents	ii
Table of Authority	iv
Opinions Below	1
Jurisdiction	1
Constitutional Provision Involved	2
Statement of the Case	4,5
Argument	6
Conclusion	14,15
Certificate of Service	16
Appendix	A-1
Decision Lenawee County Circuit Court	A-1
Judgement Lenawee County Circuit Court	A-10
Judgement of Sentence Lenawee County Circuit Court	A-12

Opinion

Michigan Court of Appeals A-14

Order - Michigan Court of Appeals

denying Motion for Rehearing A-24

Order - Michigan Supreme Court

Denying Leave To Appeal A-25

Order - Michigan Supreme Court

Denying Motion for reconsideration A-27

TABLE OF AUTHORITIES

Johnson v. U.S., 333 U.S. 10 (1948), 14 — 11,12

People v Dogans, 26 Mich App 411; 182 NW2d 585 (1970) — 9,1

People v Dreares, 221 N.Y. S.2d 819 (app. Div. 1961) — 11

People v. Reinhardt, 141 Mich App 173 (1985) 179 — 6

People v. Strelow, 96 Mich App 182 (1980) — A-19

People v Tebedo, 81 Mich App 535; 265 NW2d 406 (1978) — 9

United States v Alexander, 346 F2d 561 (CA 6, 1965) cert den, 382 US 993; 86 S Ct 575; 15 L Ed 2d 480 (1966) — 10

United States v Freeman, 144 F Supp 699 (D DC, 1956) — 10

United States v Sharpe, 322 F2d 117
(Ca 6, 1963) v, 10

Constitutional Provisions and Statutes

United States Constitution,
Amendment IV, V. 5

MCL 257. 625; MSA 9.2325 8

MCL 750.479 D; MSA 28.747 A-4

MCL 764.21; MSA 28.880 3, 6, 11, A-4, 7

MISCELLANEOUS

Coke's Repts, 91a 77 Eng. Rep. 194
(K.B. 1604) 13

OPINIONS BELOW

The opinion of the Lenawee County Circuit Court is set forth page A-1. The opinion of the Michigan Court of Appeals is set forth at page A-10 of the Appendix. The order of the Michigan Supreme Court denying leave to appeal is set forth at page A-18. The order of the Michigan Supreme Court denying motion for reconsideration is set forth on page A-19.

JURISDICTION

The Order of the Michigan Supreme Court was made and entered on December 20, 1988. The Order of the Michigan Supreme Court For Reconsideration was entered on March 29, 1989 The Jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3)

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment IV of the United States Constitution provides:

"The right of the People to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fifth Amendment, United States Constitution, which provides in pertinent part:

"* * * nor shall be compelled in any criminal case to be a witness against himself * * *"

STATE STATUTES INVOLVED

Michigan Compiled Laws 764.21; Michigan Statutes Anointed 28.880.

(A) "To make an arrest, a private person, if the offense be a felony committed in his presence, or a peace officer with a warrant or in cases of felony when authorized without a warrant, may break open an inner or outer door of any building in which the person to be arrested is or is reasonably believed to be if, after he has announced his purpose, he is refused admittance."

STATEMENT OF THE CASE

In the early mourning 3:00 A.M. September 7th 1985 the Petitioner was arrested by Michigan State Police. The Petitioner and a friend had been traveling northbound on mathews highway in Lenawee County at 28 miles per hour (state police radar). The State Police was headed south and passed Petitioner and then turned around and followed Petitioner onto private property without any siren or flashing lights on police vehicle. Petitioner started to go into his friends house owned by Paul Pinter. State Police got out of police car and told Petitioner to stop that they wanted to talk to him about his driving. Petitioner proceeded to go into friends house and closed door behind him. Trooper Cardenas opened door and came inside house without knocking and anouncing his reason for wanting to go inside the house.

Trooper Cardenas started questioning him, Petitioner objected and told him to leave. Trooper Cardenas grabed Petitioner pulling him outside tripping on doorsill and both persons fell down. Petitioner was arrested for drunk driving and was taken to the Lenawee County Jail. Petitioner was not read his Miranda Warnings until he was at the jail. Seven days later about Midnight, State Police came to Petitioner's home and arrested him for resisting and obstructing two police officers and again taken to jail arising out of the same incident. On December 10, 1985 Petitioner was found quilty of drunk driving. After three mistrials the Petitioner was found guilty of Resisting and Obstucting a Police Officer on December 5, 1986 and on January 15, 1987 he was sentenced to 90 days in jail and a $1000.00 dollar fine and 5 years probation.

ARGUMENT

The Petition for writ of certiorari should be granted because the Michigan Court of Appeals has rendered a decision in conflict with the another Michigan Court of Appeals decision People v. Reinhardt, 141 Mich App 173; 366 NW2d 245 (1985). The Michigan Supreme Court in its Order denying Leave To Appeal has remained silent on the conflict.

In Reinhardt a panel of the Michigan Court of Appeals has considered the limitations on entering private homes without a search warrant. The panel has concluded that the Michigan Legislature didn't authorize police officers to enter private residences unless they knock first and state who they are and why they want to come into the residence to make an warrantless arrest. MCL 764.21; MSA 28.880

The Forth Amendment to the U.S. Constitution does not permit police to enter private homes to further gather evidence without a search warrant before making a final determination of probable cause and then proceed to make an arrest for a misdemeanor traffic offense. In the Opinion of the Circuit Court on page A-9 "He obviously did not have the final information necessary to make an OUIL arrest simply from observing the erratic driving of the Defendant. He entered to determine whether the Defendant had been drinking". The Court admits the police didn't have probable cause to arrest defendant until they entered to gather more evidence.

Defendant claims a reasonable expectation of privacy under the Forth Amendment when he went into his friends home. The police had ample time to arrest Defendant on the road and

when they followed Defendant onto private property and told him to stop * * * * "That they wanted to talk to him about his driving." * * * The reason police didn't arrest Defendant on the road or in the driveway was because there was no probable cause that he violated MCL 257.625; MSA 9.2325. DUIL, not probable cause. Officer Cardenas stated that he entered a private residence without Knocking and anouncing why he wanted to come into a private residence. The Police officers followed Defendant for one half mile or more without ever

activating their flasher lights or siren or signalling the defendant to pull over. Police vehicles, absent such demonstations of authority, are part of the common flow of traffic, Defendant was not cognizant of the officer's purpose in following him to his friends home and entering the residence.

Officer Cardenas saying * * * "stop I want to talk to you about your driving," * * * did not provide such information. Defendant was not aware of any violation which would give him cause to elude the officer. Flight alone does not justify an arrest, particularly when the Defendant was not fleeing the scene of a crime. People v Tebedo, 81 Mich App 535; 265 NW2d 406 (1978), People v Dogans, 26 Mich App 411; 182 NW2d 585 (1970).

Under these circumstances, there was no overwhelming public interest to be served sufficient to excuse the officer from violating rules laid down by the Legislature as a matter of public policy and designed to insure the citizen against a destruction of his property or in an invasion of his personal privacy which notice and demand could have made unnecessary.

Several cases hold that substantial compliance is met by an announcement of identity which implies a declaration of purpose. United States v Alexander, 346 F2d 561 (CA 6, 1965), cert den, 382 US 993; 86 S Ct 575; 15 L Ed 2d 480 (1966), United States V Sharpe, 322 F2d 117 (CA 6, 1963), United States v Freeman 144 F Supp 669 (D DC, 1956). At first blush these cases appear to support the entry made in the instant case since defendant was well aware of the patrolman's identity; however, each case is distinguishable on at least one of several grounds: (1) the arrest was for the commission of a serious offense, (2) swift action was necessary to prevent the destruction of evidence, or (3) to prevent the flight of the suspect. None of the above circumstances is present in the instant case at bar. Furthermore, in Alexander, Sharpe, Freeman, the officer at least indicated by knocking and

identifying himself that he sought admission into the dwelling. Here Officer Cardenas did not give any warning of his intention or desire to enter a private residence. Defendant adopts the sound reasoning of the Michigan legislature that the police must follow MCL 764.21; MSA 28. 880 (knock and Annouce requirement before entering) Therefore the Michigan statutes provides the standard by which this entry into a private residence must stand or fall.

In Johnson v United States 333 U. S. 10 13-15. Where the smell of opium coming from a closed room was not enough to support an arrest and search without a warrant. Arrest on mere suspicion collides violently with the basic human right of liberty.

"The right of officers to thrust themselves into a home is also a grave

concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance. When the right of privacy must reasonably yield to the right of search is as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent." Johnson v U. S. Supra. p14 Petitioner agrues police didn't have probable cause to enter a private residence without a search warrant.

The Respondent will have you believe this was only a porch, not a residence and not entitled to the protections of the Forth Amendment to the United States Constitution. On page 6 of the transcript of the Motion to Quash Information And Dismiss dated December 16, 1985 starting at line 22 Petitioner under oath and under

direct examination.

Q. Now, would you describe the structure that you went into?

A. It was a house and it was enclosed, the back of the house is enclosed. It has a storm door on it; it has windows on it; it has a deep freeze in it, and there is also a door in it. There is a door coming in and going out.

Respondent still contends this is only a porch. Let me quote from Coke's Repts. 91a 77 Eng. Rep. 194 (K.B. 1604). One of the most forceful expressions of the maxim was that of William Pitt in Parliment in 1763:

> "The poorest man may in his cottage bid defiance to all the force of the crown. It may be frail- its roof may shake- the wind may blow through it-the storm may enter, the rain may enter-the King of England cannot enter-all his force dares not cross

the threshold of the ruined tenament."

Petitioner claims Police Officer Cardenas entered illegally and so Petitioner had a right to resist the commands of the officer when he said "step outside so I can talk to you about your driving". Flight alone does not justify an arrest, particularly when defendant is not fleeing the scene of a crime. People v Tebedo, Supra People v Dogans Supra. In People v Dreares, 221 N.Y. S.2d 819 (app. Div. 1961) The conviction for resisting a police officer was reversed, the defendant had a right to resist an unlawful arrest.

CONCLUSION

The constitutional question presented for review is of the utmost public interest and importance throughout the United States, and to law enforcement agencies at every level of government as well as the public in general.

WHEREFORE, Petitioner prays that a Writ Of Certiorari issue from this Honorable Court to review the judgement of Michigan Court of Appeals because the Michigan Supreme Court has remained silent on the conflict and the question presented has not been finally decided by the United States Supreme Court, but should be, so that the applicability of the Forth Amendment pertaining to police entering private residences investigating traffic offenses will be uniform throughout the United States.

Gary Lynn LaGore
Petitioner in Propria Persona
12995 Penington Road
Britton, Michigan 49229
(313) 439-2267

AFFIDAVIT OF SERVICE

Pursuant to Rule 28.5(c) of the rules of the Supreme Court, I hereby certify that three copies of the forgoing Petition for a Writ of Certiorari were personally hand delivered to Nathan T. Fairchild, Prosecuting Attorney, Attorney for Respondent, 425 North Main Street, Adrian, Michigan 49221, this 1st day of June, 1989.

Gary L. LaGore

Petitioner in Propria Persona

Subscribed to before me
this 1st day of June, 1989

_____
Wayne Zettel Notary Public

My commission expires: _____

APPENDIX A

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR

THE COUNTY OF LENAWEE

PEOPLE OF THE

STATE OF MICHIGAN

Plaintiff,

v OPINION

File #85-2890 FH

GARY LYNN LAGORE,

Defendant

Two State Police troopers were on patrol at three a.m. on September 7, 1985. They met Defendant on Mathews Highway going in the opposite direction but driving at only a speed of 28 miles per hour with a loud muffler and saw him "dip off the shoulder". Concluding

that he might be a drunk driver the officers turned around and before they could get completly turned around Defendant accelerated his speed, made a wide left turn in a driveway of a private residence in the process of which it appeared to the officers that he swung too wide and struck a mailbox. They followed him into the private residence which was a farm home and as with most farm homes, the main entrance was the back door. Defendant was out of his truck walking toward the back door and Officer Cardenas got out of the patrol car and went toward him calling to him to stop that he wanted to talk to him. The officers were in full uniform and it was a marked patrol car. Defendant turned around, looked at the troopers and then proceeded again toward the home. the back porch on the home was of a closed in variety with screens and with a door. The door was not locked. Defendant

walked into the back door with Trooper Cardenas close behind. According to Trooper Cardenas he opened the back door to permit the Defendant to step through the door and go outside again again when the Defendant grabbed him, pushed him out the door and both Cardenas and the Defendant tumbled down the steps. At that point the other trooper who had been driving the patrol vehicle came up and assisted in securing Defendant. Determining that the Defendant smelled of alcohol he was arrested for OUIL of which he was subsequently convicted.

Defendant has another version of affairs only to the extent that he denies he was drinking and states that Trooper Cardenas came through the back door onto what was the porch of the residence, grabbed him (Defendant) and pulled him out and down the steps. It was not the Defendant's home but that of a friend of

the Defendants. The officers looked to see if there was damage to the mailbox as they left and saw that there was. Later they were told by the Defendant's friend that the damage was done a long time ago. The officers obtained a warrant for resisting and obstructing a police officer pursuant to MSA 28.747; MCLA 750. 479 D. The Defendant alleges that this was an illegal arrest because it was made inside a dwelling. Defendant cites MCL 764.21; MSA 28.880 and People v Reinhardt 141 Mich App 173 (1985) which concludes that the statute does not authorize a police officer to enter a private home without consent to make a warrantless misdemeanor arrest. However, there is no evidence that the officer entered the back porch for making an arrest. He obviously did not have the final information necessary to make an OUIL arrest simply from observing

the erratic driving of the Defendant. He entered to determine whether the defendant had been drinking and appeared to be under the influence sufficiently so that the erratic driving could be determined to be caused by intoxication in violation of the statute.

This is significantly different from the case in which the officers entered a private dwelling for the sole purpose of arresting a person against whom they already have observed all of the elements of the offense for which they intend to charge him. The great difference is that under the circumstances of this case, the officers needed to detain Mr. LaGore so that they could determine the state of his intoxication, if any at that paricular point. time wasted in going to getting a warrant would give Mr. LaGore an opportunity to sober up and by the time they were able to

bring back a warrant and arrest him, their case would be gone. Also if he was out of their sight for a period of time they could not prove he was intoxicated while driving. This is more like a search and seizure problem and it requires no citation of authority to establish that exigent cercumstances are an important factor in any such situation. It is well established that "the balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers may sometimes permit limited intrusions upon a citizen's freedom of movement on less than probable cause, such investigatory stops comport with the reasonableness requirement of the Fourth Amendment only if the police have an articulable basis for suspecting criminal

activity." People v Freeman 413 Mich 492, 495 (1982).

In this case the articulable basis for suspecting the Defendant was operating his vehicle under the influence of liquor is obvious. Therefore, the limited interference with his freedom of movement was justified and the exigency already noted was such that there was no reason that the officer could not follow him as far as necessary whether he went in the house or not to gain his evidence before it disappeared.

MCL 764.21; MSA 28.880 applies only to entrances for the sole purpose of making an arrest without any other legitimate basis under the law for making an entrance without a warrant. Mr. LaGore's statement indicates that the officer seized him after he got inside, which is of course a question of fact to be considered in the resisting and obstucting

case. However, it does not affect the legitimacy of the officer's presence on the porch so long as the as the officer's purpose was to gather evidence before making an arrest and so long as the circumstances were such that he could not wait to get a search warrant or the evidence would disappear. Reinhardt was specifically noted by the Court to be determined soley as a matter of statutory construction. The statute does not apply to this case for reasons stated. The motion must be denied.

defendant further seekd dismissal of the charges alleging that on the 15th day of September at approximately the hour of midnight, he was arrested on the warrant on this charge.

He states it was a violation of Malcombson v Scott 56 Mich 459 (1885). That

case condemned the use of night arrest when there was no need for the same when it was necessary to hold a prisioner over until Monday mourning before bail could be set. However, Malcombson was a case where the authorities were obviously attempting to evade a writ of Habeas Corpus and it was clear that they were not acting in good faith. Futhermore, there was no opportunity to make bail on Sunday. The Court takes judicial notice that provisions are made for bail being taken Sunday mourning at 10:00 A.M. in this District. In any case, if something unreasonable was done in executing a warrant the the Court knows of no law that gives to Defendant a right to have the proceedings against him quashed.

Motion Denied. Dated: 2-5-86

Signed: Kenneth B. Glaser, Jr. Circuit Judge

APPENDIX B

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE

COUNTY OF LENAWEE

THE PEOPLE OF THE

STATE OF MICHIGAN

JUDGEMENT

vs. File No 85-2890

Gary LaGore

Defendant

At a session of said court, held at the Courthouse in the City of Adrian, in said County on the 5th day December A. D. 1986

PRESENT:

HONORABLE KENNETH B. GLASER, JR.

Circuit Judge

The respondent having been tried by a jury on the charge of

Police Officer-Resisting and Obstructing and a verdict having been rendered, a judgement of

(x) Guilty As charged

( ) Not guilty

( ) Guilty of the lessor

Included Offense of

Is hereby Entered.

KENNETH B. GLASER, JR.

Circuit Judge

12-5-86

APPENDIX C

STATE OF MICHIGAN CASE NO.85-2890 FH

39TH judicial circuit

JUDGEMENT OF SENTENCE

(X) COMMITMENT TO JAIL

Court Address Court Telephone

425 N.Main Street (517) 263-8831

Adrian, MI 49221

THE PEOPLE OF

The State Of Michigan V GARY LYNN LAGORE

DOB 4/13/44

1. AT A SESION ON JAN 15, 1987

JUDGE KENNETH B. GLASER,JR. P14036

Presiding BAR NO.

2. THE COURT FINDS that defendant was found guilty on 12/5/86 of the crime(s) as stated below. Convicted by

Plea/Court/Jury Crime

G Resisting and Obstucting a Police officer

3. Defendant (x) advised of the right to councel and and/or appointed councel and knowingly, intelligently and voluntarily waived that right.

4. IT IS ORDERED that defendant:

spend 90 days in jail, against which credit for 1 day previously served.

Work release shall be permitted by the Court.

(x)Serving of this sentence was delayed pending an appeal until further order of the Court regarding the decision of his appeal in file #86-2933 AR determining that his appeal is frivolous and therefore the court ordered immediate commencement of serving his sentence.

Sentence to begin Saturday, January 31, 1987 at 8:00 A.M.

January 15, 1987 KENNETH B. GLASER, JR.

JUDGE

APPENDIX D

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee, Sept 21 1988

v No. 98220

GARY LYNN LAGORE,

Defendant-Appellant

Before: Danhof, C.J., and Shepherd and C.L. Bosman,* JJ.

PER CURIAM.

Defendant appeals as of right his conviction by jury on December 5, 1986 of resisting and obstucting a police officer, MCL 750.479; MSA 28.747. We affirm.

On September 7, 1985 at approximately 3:00 a.m., State Troopers Cardenas and Ohlendorf were driving a marked patrol car on

* Circuit judge, sitting on the Court of Appeals by assignment.

Mathews Highway in Lenawee County. The troopers observed a truck appoaching their vehicle. As it approached, the truck moved slightly to the right. When the truck passed, the troopers determined that it had a load muffler. The troopers turned their vehicle around and followed the truck. They observed the truck drive off the right side of the road onto the unpaved portion of the highway. The truck then returned to the paved portion of the highway and accelerated.The troopers gave chase and observed the truck make a wide turn into a driveway, striking a mailbox in the process. The troopers pulled into the driveway behind the truck and observed defendant, the truck's driver, exit the vehicle and walk toward a house owned by a friend of defendant. The troopers identified themselves as police officers, told defendant to halt, and stated that they wanted to talk to him about his

driving. Defendant paused for an instant and then proceeded, entering the house's screened-in porch and closing the door behind him. Trooper Cardenas followed defendant into the porch and asked defendant to step outside. There was a brief altercation and both parties fell to the ground outside the porch.

Defendant was arrested for drunk driving and taken to the Lenawee County Jail. Seven days later, defendant was arrested for resisting and obstructing a police officer.

On December 10.1985 defendant was convicted in district court of OUIL, MCL 257.625; MSA 9.2325. This conviction was affirmed by the Lenawee County Circuit Court in an order dated June 17,1986. By order of this court, dated January 26,1987 (Docket No. 91650), defendant's application for leave to appeal his OUIL conviction was denied. Application

for leave to appeal his OUIL conviction was denied. Application for leave to appeal to the Michigan Supreme Court was denied. People v LaGore, 428 MIch 881 (1987).

WE consider two issues in turn raised by the defendant: (1) did Trooper Cardenas have the authority to enter the residence of defendant's friend without first obtaining permission, and (2) was the adjornment of the preliminary examination to a date which was more than 12 days after the arraignment a violation of the "12 Day Rule"?

Defendant moved in the circuit court to quash the information on the charge of resisting and obstructing, contending that the OUIL arrest was illegal, Defendant relies on MCL 764.21; MSA 28.880, which specifies the circumstances under which a peace officer may enter a building without permission in order to effectuate an arrest,

and People v Reinhardt, 141 Mich App 173; 366 NW2d 245 (1985), which held that the statute did not authorize a peace officer to enter a private residence without permission in order to make a warrantless misdemeanor arrest. Defendant concludes that the OUIL arrest was unlawful and that he was lawfully entitled to resist it. People v Krum, 374 Mich 356; 132 NW2d 69 (1965), cert den 381 US 935; 85 S CT 1765; 14 L Ed 2d 699 (1965).

In an opinion dated February 6, 1986, the Lenawee County Circuit Court denied defendant's motion. The circuit court found that Trooper Cardenas had entered the friend's residence not to effectuate an arrest, but to determine the state of defendant's intoxication. Therefore, the judge concluded the statue did not apply. The judge further concluded that exigent circumstances permitted the entry, since the passage of time would

cause the signs of defendant's intoxication to vanish. MCL 764.21; MSA 28.880 provides, in pertinent part:

> "To make an arrest... a peace officer... in cases of felony when authorized without a warrant, may break open an inner door or outer door of any building in which the reasonably believed to be if, after he has announced his purpose, he is refused admittance."

In Reinhardt, supra, the panel concluded that since the statute did not expressly mention warrantless misdemeamor arrests, the Legislature did not intend to authorize non-consensual entry for the purpose of making such arrest.

In People v Strelow, 96 Mich App 182 NW2d 517 (1980), Another panel of this court

reached the opposite conclusion. The Strelow Court held that "substantial compliance" by a peace officer with the requirement of the statute was sufficient to permit a warrantless misdemeanor arrest. The Strelow Court added that exigent circumstances, such as prevention of the destruction of evidence, might justify non-consensual entry even where there had not been substantial compliance by the peace officer with the requirement that he identify his presence and his purpose, Strelow, supra, pp 191-192.

Pursuant to Administrative Order 1984-2, This Court has certified to the Michigan Supreme Court that Reinhardt and Strelow are in conflict. The Supreme Court has considered the matter and declined to take any action on the question presented. People v Reinhardt, 422 Mich 1206 (1985).

In this case, LaGore had driven his vehicle in

an erratic manner justifying the police officers' investigation and subsequent arrest for OUIL. Prior to reaching the porch of his friend's house, LaGore ignored the order of a police officer to stop after the police officer identified himself and stated his reason for the order. The significant danger of the disappearance of critical evidence through the dissipation of alcohol from LaGore's blood over the period of the time necessary to obtain a warrant presented exigent circumstances. Additionally, LaGore made it clear by his acts prior to entering the home that he was not going to cooperate with the officers. The exceptions to the statutory requirements are present and justify the actions of Trooper Cardenas. Strelow, supra.

We next consider the issue concerning the "12 Day Rule". Defendant's preliminary examination

was commenced within a week of his arrainment. However, Trooper Cardenas left on vaction before receiving notice of a supoena regarding the taking the testimony of one witness, the district judge granted the people's motion to adjourn the hearing for two weeks to allow Trooper Cardenas, a material witness, to attend.

A preliminary examination must be held within 12 days of the arraignment. MCL 766.4; MSA 28.922; People v Western, 413 Mich 371, 376; 319 NW2d 537 (1982). However, an adjournment or continuance of a preliminary examination may be granted if good cause is shown. MCL 766.7; MSA 28.925; People v Horne, 147 Mich App 375; 383 NW2d 208 (208) (1985). The unavailability of an essential police witness because of a vacation has been held to be "good cause" justifying the adjournment of a preliminary examination. Horne, supra. We

agree with the reasoning in Horne and find defendants contention on this issue to be without merit.

Affirmed

/s/ Robert J. Danhof
/s/ John H. Shepherd
/s/ Calvin L. Bosman

APPENDIX E

Court of Appeals, State Of Michigan

ORDER

People v Gary Lynn LaGore

Robert J. Danhof,C.J.

Presiding Judge

Docket # 98220 John H. Sheperd

Calvin L. Bosman

L.C. 852890 FH Judges

The Court orders that the motion for rehearing is DENIED.

A true copy entered and certified by Ronald L. Dzierbicki, Chief Clerk, on

November 17,1988

Chief Clerk

APENDIX F

ORDER MICHIGAN SUPREME COURT

ENTERED DECEMBER 20, 1988

84254 & (54)

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

v SC 84254

GARY LYNN LAGORE COA 98220

LC 85-2890 FH

On order of the Court, the certification by the Court of Appeals pursuant to Administrative Order 1984-2 that its decision in this case conflicts with its decision in People v Reinhardt, 141 Mich App 173; 366 NW2d 245 (1985) and the application for leave to appeal is DENIED, and the Court respectfully declines to order further consideration of the questions presented.

Archer, J. , would grant leave to appeal.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

December 20, 1988

Clerk

APPENDIX G

ORDER

MICHIGAN SUPREME COURT

Lansing, Michigan

ENTERED March 29, 1989

84254

(60)

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

v

SC 84254

COA 98220

LC 85-2890 FH

GARY LYNN LAGORE

Defendant-Appellant.

On order of the Court, the motion for reconsideration of this court's order of December 20, 1988, is considered, and it is

DENIED, because it does not appear that the order was entered erroneously.

10321

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

March 29, 1989

Deputy Clerk